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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Krishna Gupta and Valeriu Smiricinski
Serial No.: 10/651,074
Filed: August 28, 2003
For: METHOD AND APPARATUS FOR REDUCTION OF GAS BUBBLE
FORMATION DUE TO GAS DIFFUSION THROUGH LIQUIDS
CONTAINED IN PORES
Examiner: Not Assigned
Art Unit: 2856
Docket No.: PMI-23

PETITION UNDER 37 CFR §1.47

In response to the Notice to File Missing Parts dated November 20, 2003, a copy of which is attached hereto, please consider the attached supporting declarations and this petition to accept the patent application identified above for consideration on the merits without a declaration signed by a joint inventor, Valeriu Smiricinski, who has refused to sign the oath or declaration.

The attached declarations in support of this petition are made by persons with first-hand knowledge of the facts.

Evidence in the form of the attached declarations and supporting documentation has been provided that Mr. Smiricinski refused to sign the declaration. The appropriate petition fee under §1.17(h) is attached hereto.

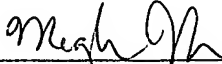
In addition, applicant hereby petitions for extension of time to respond under §1.136(a). The appropriate petition fee is attached hereto.

All of the requirements of 37 CFR §1.47 are believed to have been satisfied and that this petition should be granted. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' agent would advance the prosecution of the case to finality, the Examiner is invited to telephone the undersigned at the number given below.

"Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file"

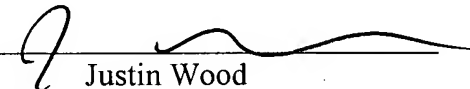
Respectfully Submitted:

Krishna Gupta

By: 
Meghan Van Leeuwen, Reg. No. 45,612
Agent for Application
Brown & Michaels
400 M&T Bank Building - 118 North Tioga Street
Ithaca, NY 14850
(607) 256-2000 (607) 256-3628 (fax)
E-Mail: vanleeuwen@bpmlegal.com
Dated: 2/13/04

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited in the U.S. Postal Service as Express Mail No: 7003 0500 0002 3635-3367 with a return receipt requested, in an envelope addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231 on 2/12/04.


Justin Wood



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Krishna Gupta and Valeriu Smiricinshi
Serial No.: 10/651,074
Filed: August 28, 2003
For: METHOD AND APPARATUS FOR REDUCTION OF GAS BUBBLE
FORMATION DUE TO GAS DIFFUSION THROUGH LIQUIDS
CONTAINED IN PORES
Examiner: Not assigned
Art Unit: 2856
Docket No.: PMI-23

**DECLARATION IN SUPPORT OF
PETITION UNDER 37 CFR §1.47**


I declare that:

1. I am an agent of record for the patent application identified above and am registered to practice before the Patent & Trademark Office (Reg. No. 45,612).
3. To the best of my knowledge, Dr. Smiricinschi's residence is 316 Highland Road, Apt B204, Ithaca, NY 14850.
3. Dr. Gupta has executed a declaration as required under 37 CFR §1.63 and 37 CFR §1.47 which is attached hereto. Exhibits A through E are attached to this declaration, and Exhibits F through H are attached to Dr. Gupta's declaration.
4. I sent a copy of the application identical to the application as filed and a combined declaration and power of attorney form substantially identical to the declaration signed by Dr. Krishna Gupta attached hereto to Mr. Smiricinschi by mail on May 14, 2003 (Exhibit A) and sent a copy of the figures identical to the figures as filed to Mr. Smiricinschi by e-mail on May 15, 2003 (Exhibit B).
5. Mr. Smiricinschi has not returned the combined Declaration and Power of Attorney to our office as of today.

6. In an e-mail dated June 3, 2003 (Exhibit C), Mr. Smiricinski notified me that, in order to sign the documents, Dr. Gupta would have to contact his attorney.
7. On June 4, 2003, I forwarded Mr. Smiricinski's e-mail to Dr. Gupta by e-mail (Exhibit D). Since the rules of ethics state that I should not contact represented individuals directly, our office has not made any further attempts to contact Mr. Smiricinski.
8. On August 28, 2003, our office filed the above-mentioned patent application without Mr. Smiricinski's signature.
9. After receiving the Notice of Missing Parts mailed November 20, 2003, we notified Dr. Gupta that Mr. Smiricinski's signature was still required.
10. On January 22, 2004, Mr. Smiricinski sent Michael F. Brown, an attorney in our office, an e-mail for Dr. Gupta, stating that he filed his own patent application to the method in the above-captioned application (Exhibit E).
11. In the same e-mail dated January 22, 2004, Mr. Smiricinski stated that "unless we meet and discuss all situation with patent over, I do not see it possible for me to sign the documents at this stage" (Exhibit E).
12. Mr. Smiricinski has not made any indication to me that he is willing to execute an inventorship declaration for this application.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 2/13/04

By: 
Meghan Van Leeuwen



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Krishna Gupta and Valeriu Smiricinshi
Serial No.: 10/651,074
Filed: August 28, 2003
For: METHOD AND APPARATUS FOR REDUCTION OF GAS BUBBLE
FORMATION DUE TO GAS DIFFUSION THROUGH LIQUIDS
CONTAINED IN PORES
Examiner: Not assigned
Art Unit: 2856
Docket No.: PMI-23

**DECLARATION IN SUPPORT OF
PETITION UNDER 37 CFR §1.47**

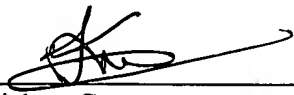
I declare that:

1. My name is Krishna Gupta, and I reside at 12 Grandview Drive, Ithaca, New York 14850
2. I am the President of Porous Materials, Inc., 20 Brown Road, Ithaca, New York 14850.
3. I am a co-inventor on the above-captioned application.
4. Valeriu Smiricinschi, one of the inventors of the invention claimed in the above-captioned application, was an employee of Porous Materials, Inc. from December 10, 2001 until June 5, 2002.
5. His home address at that time was 316 Highland Road, Apt B204, Ithaca, New York 14850.
6. I have made several efforts to contact Mr. Smiricinschi at the home address above.
7. On May 5, 2003, I sent Mr. Smiricinschi a letter (Exhibit F). The Declaration and Power of Attorney was enclosed in that mailing, and I requested Mr. Smiricinschi's signature at that time.
8. On June 4, 2003, Meghan Van Leeuwen, one of our patent agents, forwarded me an e-mail (Exhibit D) from Mr. Smiricinschi requesting that we contact his attorney, David Feeney, regarding the matter.

9. I authorized the law firm of Brown & Michaels, P.C. to file the present application, without Mr. Smiricinski's signature, on August 28, 2003.
10. In December 2003, one of my employees, Michael Houle, spoke to David Feeney, and Mr. Feeney stated that he would get back to Mr. Houle, but never did.
11. On January 13, 2004, another one of my employees, Susan Fair, left a telephone message for Mr. Feeney. Mr. Feeney returned her call, and stated that he no longer represented Mr. Smiricinski, although he had been representing him in June, 2003.
12. On January 20, 2004, I sent Mr. Smiricinski another letter (Exhibit G) requesting his signature, and again enclosed the Declaration and Power of Attorney.
13. In response to my January 20, 2004 letter, Mr. Smiricinski sent Michael F. Brown, one of our patent attorneys, an e-mail dated January 22, 2004, stating that he did not see it possible for him to sign the documents at this stage. A copy of the e-mail, which was meant for me and forwarded to me by Mr. Brown, is attached (Exhibit H).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 2-10-04



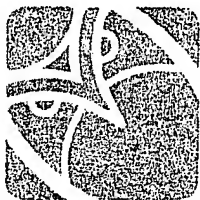
Krishna Gupta

EXHIBIT A

BROWN &
MICHAELS, PC

Our knowledge protects yours

May 14, 2003



Valeriu Smiricinski
316 Highland Rd. Apt B204
Ithaca, New York 14850

MICHAEL F. BROWN®
CHRISTOPHER A. MICHAELS®
THOMAS T. AQUILA, PhD®
MEGHAN VAN LEEUWEN®
FRANK F. TIAN®
LYNDA M. WOOD®

OF COUNSEL
RALPH R. BARNARD (RETIRED)®

® Registered Patent Attorney
® Registered Patent Agent
! Also Admitted In NJ

Re: Patent Application
METHOD AND APPARATUS FOR REDUCTION OF GAS
BUBBLE FORMATION DUE TO GAS DIFFUSION THROUGH
LIQUIDS CONTAINED IN PORES

Our docket no.: PMI-23

Dear Mr. Smiricinski:

Enclosed is a copy of a revised version of the above-identified patent application that you requested. Per Dr. Jena's comments, I made some minor changes to the last draft you received from our office. A redlined copy which compares the two versions is also attached.

Once you and Dr. Gupta approve a final draft of the application, please sign and date the declaration/POA. Please contact me by telephone or e-mail at vanleeuwen@bpmlegal.com if you have any additional changes to be incorporated into the application.

Please return the signed declaration and assignment to Dr. Gupta.

Sincerely,
Brown & Michaels, PC

By: Meghan Van Leeuwen

400 M&T Bank Building
118 North Tioga Street
Ithaca, New York 14850

607-256-2000
fax: 607-256-3628

MVL/ns
Enclosure
cc: Dr. Krishna Gupta

bpm@bpmlegal.com
<http://www.bpmlegal.com>

*Service by electronic
communications not accepted*

EXHIBIT B

Van Leeuwen, Meghan

From: Van Leeuwen, Meghan
Sent: Thursday, May 15, 2003 1:29 PM
To: 'Valeri Smirichinski'
Cc: Mike Brown
Subject: RE: PMI-23 patent



Fig1.pdf



Fig2.pdf



Fig3.pdf

Mr. Smiricinski,

I apologize for not sending you the figures yesterday. I thought they had been sent in our earlier correspondence, and since they had not changed, I did not think I needed to send them again.

I am attaching the figures in pdf format. Let me know if you have problems opening them, or if you need me to send them to you by mail.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

Meghan

-----Original Message-----

From: Valeri Smirichinski [mailto:smirvi@yahoo.com]
Sent: Thursday, May 15, 2003 1:14 PM
To: Van Leeuwen, Meghan
Subject: PMI-23 patent

Dear Meghan Van Leeuwen,
I have got today by mail the revised version of the patent PMI-23, thank you.
But I cannot find figures referred in the text (see page 2 for example) there as well as in the previous copy. I have mentioned this to Michael Brown at phone call before but he said that all will be in the final copy. Thus will be waiting for full copy or figures in printed version by mail.
You can always reach me by this e-mail or smirvi@astro.cornell.edu.
Best regards,
V. Smiricinski

Do you Yahoo!?
The New Yahoo! Search - Faster. Easier. Bingo.
<http://search.yahoo.com>

EXHIBIT C

Van Leeuwen, Meghan

From: Valeri Smirichinski [smirvi@yahoo.com]
Sent: Tuesday, June 03, 2003 8:03 PM
To: Van Leeuwen, Meghan
Subject: RE: PMI-23 patent

Dear Meghan,
I've looked through the patent materials, thank you.
For me to sign the papers Dr. Gupta or his
representative should contact my attorney David
Feeney, his contact info is below:

David W. Feeney II
Harris Beach Attorneys at Law
119 East Seneca Street
Ithaca, New York 14850
Phone: (607) 273-6444
Fax: (607) 273-6802
E-mail: dfeeney@harrisbeach.com
web-page: www.harrisbeach.com

Feel free to contact him or me in case of further
questions.
Best regards,
Valera

Dr. V. Smiricinski
Clark Hall, Physics Department,
Cornell University,
Ithaca, NY, 14850
E-mail: smirvi@astro.cornell.edu

--- "Van Leeuwen, Meghan" <VanLeeuwen@bpmlegal.com>
wrote:
> Valeri,
>
> Thanks. I look forward to hearing from you.
>
> Sincerely,
>
> Meghan
> Brown & Michaels, P.C.
> (607)-256-2000
>
> -----Original Message-----
> From: Valeri Smirichinski [mailto:smirvi@yahoo.com]
> Sent: Monday, June 02, 2003 2:25 PM
> To: Van Leeuwen, Meghan
> Subject: RE: PMI-23 patent
>
>
> Dear Meghan,
> Thank you for your letter.
> I will contact you about the patent matter sometime
> this week.
> Best regards,
> V. Smiricinski
>
> --- "Van Leeuwen, Meghan" <VanLeeuwen@bpmlegal.com>
> wrote:
> > Mr. Smiricinski,

> >
> > I was wondering if you had a chance to review the
> > application, and read,
> > sign and date the paperwork we sent you. Once you
> > do, you can send the
> > paperwork to me by mail (see our address below) or
> > by fax at 256-3628.

> >
> > Once we receive the signed paperwork from you, (we
> > already received Dr.
> > Gupta's paperwork), we can file the application.

> >
> > Please feel free to contact me or Mike Brown if
> > you
> > have any questions
> > or concerns.

> >
> > Sincerely,

> >
> > Meghan
> > Brown & Michaels, P.C.
> > 400 M & T Bank Building
> > 118 N. Tioga Street
> > Ithaca, NY 14850
> > 607-256-2000

> > -----Original Message-----

> > From: Valeri Smirichinski
> > [mailto:smirvi@yahoo.com]
> > Sent: Thursday, May 15, 2003 1:14 PM
> > To: Van Leeuwen, Meghan
> > Subject: PMI-23 patent

> >
> > Dear Meghan Van Leeuwen,
> > I have got today by mail the revised version of
> > the
> > patent PMI-23, thank you.
> > But I cannot find figures refered in the text (see
> > page 2 for example) there as well as in the
> > previous
> > copy. I have mentioned this to Michael Brown at
> > phone
> > call before but he said that all will be in the
> > final
> > copy. Thus will be waiting for full copy or
> > figures
> > in
> > printed version by mail.
> > You can always reach me by this e-mail or
> > smirvi@astro.cornell.edu.
> > Best regards,
> > V. Smiricinski

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> > Do you Yahoo!?
> > The New Yahoo! Search - Faster. Easier. Bingo.
> > <http://search.yahoo.com>

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> >
> > Do you Yahoo!?
> > Yahoo! Calendar - Free online calendar with sync to

> Outlook(TM) .
> <http://calendar.yahoo.com>

Do you Yahoo!?

Yahoo! Calendar - Free online calendar with sync to Outlook(TM).
<http://calendar.yahoo.com>

Incoming mail is certified Virus Free.

Checked by AVG anti-virus system (<http://www.grisoft.com>).

Version: 6.0.486 / Virus Database: 284 - Release Date: 5/29/2003

EXHIBIT D
Van Leeuwen, Meghan

From: Van Leeuwen, Meghan
Sent: Wednesday, June 04, 2003 11:39 AM
To: Krishna Gupta (E-mail)
Cc: Mike Brown
Subject: PMI-23

Dr. Gupta,

We received the e-mail below from Mr. Smirichinski yesterday. Please have your attorney handling employment matters contact Harris Beach directly.

If you do not have an employment attorney, we would be happy to recommend one at Coughlin & Gerhart, a Binghamton firm we work closely with on litigation matters.

Please feel free to contact Mike or I if you have any questions or concerns.

Sincerely,

Meghan

-----Original Message-----

From: Valeri Smirichinski [mailto:smirvi@yahoo.com]
Sent: Tuesday, June 03, 2003 8:03 PM
To: Van Leeuwen, Meghan
Subject: RE: PMI-23 patent

Dear Meghan,
I've looked through the patent materials, thank you.
For me to sign the papers Dr. Gupta or his representative should contact my attorney David Feeney, his contact info is below:

David W. Feeney II
Harris Beach Attorneys at Law
119 East Seneca Street
Ithaca, New York 14850
Phone: (607) 273-6444
Fax: (607) 273-6802
E-mail: dfeeney@harrisbeach.com
web-page: www.harrisbeach.com

Feel free to contact him or me in case of further questions.
Best regards,
Valera

Dr. V. Smirichinski
Clark Hall, Physics Department,
Cornell University,
Ithaca, NY, 14850
E-mail: smirvi@astro.cornell.edu

--- "Van Leeuwen, Meghan" <VanLeeuwen@bpmlegal.com>
wrote:
> Valeri,
>

> Thanks. I look forward to hearing from you.

> Sincerely,

> Meghan

> Brown & Michaels, P.C.

> (607)-256-2000

> -----Original Message-----

> From: Valeri Smirichinski [mailto:smirvi@yahoo.com]

> Sent: Monday, June 02, 2003 2:25 PM

> To: Van Leeuwen, Meghan

> Subject: RE: PMI-23 patent

> Dear Meghan,

> Thank you for your letter.

> I will contact you about the patent matter sometime
> this week.

> Best regards,

> V. Smirichinski

> --- "Van Leeuwen, Meghan" <VanLeeuwen@bpmlegal.com>
> wrote:

> > Mr. Smirichinski,

> > I was wondering if you had a chance to review the
> > application, and read,
> > sign and date the paperwork we sent you. Once you
> > do, you can send the
> > paperwork to me by mail (see our address below) or
> > by fax at 256-3628.

> > Once we receive the signed paperwork from you, (we
> > already received Dr.
> > Gupta's paperwork), we can file the application.

> > Please feel free to contact me or Mike Brown if
> > you

> > have any questions

> > or concerns.

> > Sincerely,

> > Meghan

> > Brown & Michaels, P.C.

> > 400 M & T Bank Building

> > 118 N. Tioga Street

> > Ithaca, NY 14850

> > 607-256-2000

> > -----Original Message-----

> > From: Valeri Smirichinski

> > [mailto:smirvi@yahoo.com]

> > Sent: Thursday, May 15, 2003 1:14 PM

> > To: Van Leeuwen, Meghan

> > Subject: PMI-23 patent

> > Dear Meghan Van Leeuwen,

> > I have got today by mail the revised version of
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> > patent PMI-23, thank you.

> > But I cannot find figures referred in the text (see
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> > copy. I have mentioned this to Michael Brown at

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> > call before but he said that all will be in the
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> > You can always reach me by this e-mail or
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> > Best regards,
> > V. Smiricinski
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> > _____
> > Do you Yahoo!?
> > The New Yahoo! Search - Faster. Easier. Bingo.
> > <http://search.yahoo.com>
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> _____
> Do you Yahoo!?
> Yahoo! Calendar - Free online calendar with sync to
> Outlook(TM).
> <http://calendar.yahoo.com>

Do you Yahoo!?
Yahoo! Calendar - Free online calendar with sync to Outlook(TM).
<http://calendar.yahoo.com>

Incoming mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.486 / Virus Database: 284 - Release Date: 5/29/2003

EXHIBIT E

From: Valera Smirichiuski [smirvi@astro.cornell.edu]

Sent: Thursday, January 22, 2004 11:21 PM

To: Brown, Mike

Subject: for Dr. Gupta

Dear Dr. Krishna Gupta,

Today I have got a package from you by mail with documents to sign, one is Assignment and Agreement and another being Declaration and Power of Attorney for the patent "Method and Apparatus for reduction of gas bubble formation due to gas diffusion through liquids contained in pores".

As you mentioned in the letter you have send this documents back in May 2003, when I asked you to contact my attorney, David. W. Feeney from Brown&Michaels. Surprisingly it took you around 7 month to do so as now is January 2004. I didn't see it reasonable to keep the attorney active on the case of the patent for such a long time as I seriously consider my work and have applied for patenting my method not hearing from you for so long. I have a date of publication already.

So unless we meet and discuss all situation with patent over,

I do not see it possible for me to sign the documents at this stage.
Regards,

Dr. Valeriu Smiricinski.

EXHIBIT F

Powder & Porous Materials Technology
Analytical Services & Consultation
Instrumentation Sales & Leasing

**Porous Materials, Inc.**

Cornell University Research Park / R3 Brown Road, Bldg. 4 / Ithaca NY 14850 / USA

May 5, 2003

Valeriu Smircinschi
316 Highland Road, B-204
Ithaca, NY 14850

Dear Valeriu Smircinschi,

Please find enclosed two forms for your signature. One being the Assignment and Agreement for the **"METHOD AND APPARATUS FOR REDUCTION OF GAS BUBBLE FORMATION DUE TO GAS DIFFUSION THROUGH LIQUIDS CONTAINED IN PORES"** and another for Declaration and Power of Attorney for Patent Application.

Please respond promptly.

Sincerely,

Dr. Krishna Gupta

Not Just Production SolutionsTel: 607-257-5544 / Fax: 607-257-5639 / email: info@pmiapp.com Toll Free: 1-800-TALK-PMI (U.S. & Canada)www.pmiapp.com

EXHIBIT G

**Porous Materials, Inc.**

20 Dutch Mill Road / Ithaca NY 14850 - 9785 / USA

January 20, 2004

Valeriu Smiricinski
316 Highland Road, B-204
Ithaca, NY 14850

Dear Valeriu Smiricinski,

We sent you two documents for your signature on May 5, 2003. One was the Assignment and Agreement and another for Declaration and Power of Attorney for the Patent Application. **"METHOD AND APPARATUS FOR REDUCTION OF GAS BUBBLE FORMATION DUE TO GAS DIFFUSION THROUGH LIQUIDS CONTAINED IN PORES"**

Our attorney, Brown & Michaels also sent you a copy of the patent application. You still have not signed and returned the documents as of today. I am again enclosing both documents for your signature

The attorney with whom you wanted us to contact informs us that he no longer represents you at this time. Are you being represented by another attorney or law firm?

I urge you to sign the documents and return them to us. It is important that you respond to this letter within 7 days from the date of receipt.

Sincerely,

Dr. Krishna Gupta

Not Just Products. SolutionsTel: 607-257-5544 / Fax: 607-257-5639 / email: info@pmiapp.com Toll Free: 1-800-TALK-PMI (U.S. & Canada)www.pmiapp.com

Mike Brown, 09:41 AM 1/23/2004, FW: for Dr. Gupta

X-Authentication-Warning: smtp0.lightlink.com: mbrown set sender to brown@bpmlegal.com using -f

Reply-To: <brown@bpmlegal.com>

From: "Mike Brown" <brown@bpmlegal.com>

To: "Krishna Gupta" <kgupta@pmiapp.com>

Subject: FW: for Dr. Gupta

Date: Fri, 23 Jan 2004 09:41:09 -0500

Organization: Brown & Michaels, PC

X-Mailer: Microsoft Outlook, Build 10.0.2627

Importance: Normal

X-MIME-Autoconverted: from quoted-printable to 8bit by smtp0.lightlink.com id JAA08111

This was addressed to you, but sent to me for some reason.

Michael F. Brown

Reg. Pat. Attorney No. 29,619

<http://www.bpmlegal.com/>

-----Original Message-----

From: Valera Smirichiuski [<mailto:smirvi@astro.cornell.edu>]

Sent: Thursday, January 22, 2004 11:21 PM

To: Brown, Mike

Subject: for Dr. Gupta

Dear Dr. Krishna Gupta,

Today I have got a package from you by mail with documents to sign, one is Assignment and Agreement and another being Declaration and Power of Attorney for the patent "Method and Apparatus for reduction of gas bubble formation due to gas diffusion through liquids contained in pores".

As you mentioned in the letter you have send this documents back in May 2003, when I asked you to contact my attorney, David. W. Feeney from Brown&Michaels. Surprisingly it took you around 7 month to do so as now is January 2004. I didn't see it reasonable to keep the attorney active on the case of the patent for such a long time as I seriously consider my work and have applied for patenting my method not hearing from you for so long. I have a date of publication already.

So unless we meet and discuss all situation with patent over, I do not see it possible for me to sign the documents at this stage.
Regards,

Dr. Valeriu Smiricinschi.